

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INQUIRY INTO THE APPROPRIATE SCOPE OF TELECOMMUNICATIONS REGULATION	DOCKET NO. NOI-2013-0001
---	--------------------------

**ORDER INITIATING INQUIRY**

(Issued January 11, 2013)

**I. INTRODUCTION**

The Utilities Board (Board) is opening this docket to receive public comment regarding the appropriate scope of regulation of telecommunications services in Iowa. It appears the existing regulatory statutes (primarily Iowa Code chapters 476 and 478) contain outdated provisions and may benefit from a general review with the goal of updating the regulatory approach to reflect new technology and new market conditions. Accordingly, the Board is inviting comment on possible updates to statutes.

The Board is aware that some states are considering, or have enacted, different degrees of regulation for different telecommunications technologies. Since 2010, at least 22 different states have taken steps to update their approach to regulating the telecommunications industry. Many states have deregulated retail rates, as Iowa did in 2008. Others have altered or eliminated tariff requirements, changed their quality of service standards, changed their carrier of last resort (COLR)

requirements, or otherwise taken action to reduce regulation. Increased competition in the telecommunications marketplace appears to be the most common justification for these actions. That competition includes not only the traditional wireline local exchange carriers but also wireless carriers and Voice over Internet Protocol (VoIP) service providers.

To the extent the market is becoming increasingly competitive, it may be appropriate to re-evaluate the need for the existing system of intrastate telecommunications regulation. It seems likely that some level of regulation will continue to be necessary to protect the public interest, but the extent and nature of that regulation deserves discussion. Accordingly, the Board is opening this docket to receive comment from the public regarding these issues.

In this order, the Board identifies a number of topics for discussion. This list should not be considered exclusive or limiting; comment is sought concerning all aspects of the appropriate future of telecommunications regulation in Iowa.

## **II. TOPICS FOR INQUIRY**

### **A. VoIP**

As noted above, many states have recently enacted legislation altering the scope of regulation in those states, particularly with respect to VoIP traffic on the public switched telephone network (PSTN), which the FCC has defined as “traffic

exchanged over PSTN facilities that originates and/or terminates in IP format.”<sup>1</sup> It appears the activity in some of those states may generally be described as limiting or reducing regulatory authority over many aspects of VoIP while typically preserving state regulatory authority over matters such as taxes, fees for E911 and Telecommunications Relay Service (TRS), delegated federal authority, and management of the use of public rights-of-way, among other things. Regulation of traditional telecommunications service may or may not be affected by these changes.

Initially, the Board seeks to understand whether VoIP technology is different from the technology used for traditional service in some way that justifies disparate regulatory treatment. Technological differences can justify different regulatory treatment; mobile telephone technology is an example. But at this stage, the Board has not identified any technological basis for treating non-nomadic VoIP in a different manner than other voice telecommunications services and has determined in at least two cases that intrastate VoIP service is subject to certain regulatory requirements.<sup>2</sup> Stated differently, if some degree of reduced or limited regulation is appropriate in the telecommunications marketplace, why should it be limited to VoIP? Would a difference in regulatory activity create an artificial competitive advantage based on the technology used?

---

<sup>1</sup> See *In the Matter of Connect America Fund, etc.*, WC Docket No. 10-90, etc., 26 FCC Rcd. 17663 (2011), *pets. for review* pending (hereinafter the “CAF Order”), at para. 940.

<sup>2</sup> *Sprint Comm. Co. L.P. v. Iowa Telecommunications Services, Inc.*, Docket No. FCU-2010-0001, and *MCC Telephone of Iowa, LLC, et al., v. Capitol Infrastructure LLC, et al.*, Docket No. FCU-2010-0015.

**B. Other questions regarding the appropriate scope of regulation**

Regardless of whether there is a basis for regulating services in differing manners based on the technology used, the Board is also interested in public comment on the appropriate scope of regulation for telecommunications services in today's market. Without limiting the scope of the comments, the Board is interested in receiving comments concerning the continued appropriateness of the following regulatory requirements:

**1. Carrier of last resort obligations, Iowa Code § 476.29(5)**

Iowa's COLR requirement is different than in many other states. Section 476.29(5) provides that each local exchange utility has an obligation to serve all eligible customers within the utility's service territory. Thus, on paper the obligation is shared among all the local service providers; no single company is designated.

However, in practice it appears the obligation to serve remote customers has fallen mainly on the ILEC (incumbent local exchange carrier), as many (if not most) CLECs (competitive local exchange carrier) resell the ILEC's facilities if required to provide service to every customer in an exchange, including those beyond the reach of their own facilities. Meanwhile, wireless service availability in rural areas may be improving, although the Board does not monitor that. The Board is interested in comment concerning the need for, and proper design of, a modern COLR requirement.

**2. Consumer protection and complaint resolution, including unauthorized changes in service (slamming and cramming), §§ 476.3 and 476.103**

The Board continues to receive significant numbers of consumer complaints against telecommunications carriers, most of which involve unauthorized changes to a consumer's telecommunications service. It appears the Board provides a relatively fast and inexpensive process for resolving these complaints and for discouraging behavior that is contrary to the public interest. Moreover, the Board participates in enforcement of the FCC's slamming rules.<sup>3</sup> The Board is interested in receiving comment about the continuing need for this consumer protection function.

**3. Fees assessed to telecommunications carriers**

Telecommunications carriers are assessed a variety of fees for programs that promote the public interest, such as E911 (Iowa Code chapters 34 and 34A), dual party relay service (chapter 477C), Board assessments for the cost of regulation (§ 476.10), and perhaps others. The Board understands that most carriers pass most, if not all, of these fees through to their customers in the form of a surcharge or separate line item on each customer's bill. These fees are not always assessed on a consistent basis, in terms of the services or revenues they are based on or the carriers they are assessed to. As a result, customers of some telecommunications carriers, such as certain VoIP service providers, may make use of E911 or the dual party relay service but may not pay any part of the cost of those programs.

---

<sup>3</sup> See <http://www.fcc.gov/encyclopedia/slamming-states-administering-slamming-rules>.

The Board will assume that the E911 and dual party relay service programs will continue even if the telecommunications industry is further deregulated. If that assumption is correct, then as a general principle it seems the costs of these programs should be collected from telecommunications carriers (and, ultimately, their customers) over as broad a base as possible.

Board assessments are somewhat different. Many carriers have availed themselves of the Board's services, such as its authority to resolve inter-carrier disputes pursuant to § 476.11, and the Board is able to assess its costs associated with those proceedings to the carrier(s) involved. The Board also has ongoing costs associated with various other telecommunications regulation, such as administering the state functions associated with the federal universal service program, and those costs are typically assessed to the regulated telecommunications industry in general. Finally, the Board has general overhead costs that must be recovered from all regulated entities, since they are not associated with any particular utility or industry. The Board is interested in receiving comment regarding the most equitable mechanism for recovering its costs from the cost-causers, including those who indirectly benefit from the Board's regulatory actions.

#### **4. Federally-delegated regulatory authority**

In addition to the slamming enforcement activity described above, the Board undertakes a variety of regulatory activity pursuant to authority delegated to states by the federal government. This includes a variety of actions pursuant to 47 U.S.C.

§§ 251 and 252 that are generally directed at promoting and protecting a competitive marketplace for local exchange carrier services; telephone numbering issues pursuant to § 251; federal universal service fund administration pursuant to § 254; and perhaps others. Some of these functions are mandatory delegations, while others are optional. Interested persons are invited to comment upon the agency's continued participation in these programs.

**5. State authority to hear and resolve intercarrier disputes**

Iowa Code § 476.11 gives the Board jurisdiction to hear complaints and resolve disputes regarding the terms and conditions of interconnection between carriers. This authority has been invoked by a number of telecommunications utilities in recent years. The Board is interested in receiving comment from the public regarding the continued usefulness of this alternative for resolving intercarrier disputes.

**6. Quality of service regulations**

Iowa Code § 476.3, among other provisions, gives the Board jurisdiction over the quality of service provided by wireline local exchange carriers (with the exception of services or facilities that are fully deregulated pursuant to § 476.1D(1), as opposed to those services that are only deregulated as to rates pursuant to § 476.1D(1)"c"). The Board's rules contain various provisions implementing this authority. It could be argued that competition in the marketplace makes quality-of-service regulation less necessary; it could also be argued that the level of competition in the local exchange

service marketplace is not yet sufficiently robust to make this type of regulation unnecessary, as may be demonstrated by the ongoing call-completion situation affecting rural customers in Iowa and elsewhere. Interested persons are invited to comment on this issue.

**7. Management of public right-of-way, including joint use of utility poles**

In Docket No. RMU-2011-0007, the Board is considering the possibility of asserting jurisdiction over utility pole attachments. Any specific issues associated with that proposal will be considered in that docket, rather than this one. However, in this docket the Board will consider more general comments concerning joint use of utility poles and management of the public right-of-way in general.

**8. Railroad crossings by telecommunications utilities**

Iowa Code § 476.27 gives the Board jurisdiction to adopt rules prescribing the terms and conditions for crossing of railroad right-of-way by utility facilities, including communications services. It seems likely that communications utilities would prefer that this jurisdiction continue, regardless of what other changes might be made to the Board's regulatory authority; still, the Board invites comment on the continued need for this provision in the future.

**9. Alternative operator services companies**

Iowa Code § 476.91 gives the Board jurisdiction over services provided by alternative operator services (AOS) companies, regardless of deregulation pursuant to § 476.1D. An AOS company is defined as a nongovernmental company that



receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-users from telephones other than ordinary residence and business telephones. The classic example of an AOS company was a service provider at a hotel in the days before wireless telephones became so common; hotel customers were effectively captive customers of the hotel's telecommunications service provider. Some service providers (and hotels) took advantage of that situation by implementing unreasonable rates for calls from the customer's hotel room.

The widespread use of wireless telephones appears to have made this provision less necessary in the hotel situation described above. However, AOS concerns may still exist in certain markets, such as telecommunications services provided to inmates at correctional institutions. The Board invites comment on this provision.

#### **10. Tariff requirements**

Iowa Code §§ 476.4, 476.4A, 476.5, and other statutory provisions establish a variety of rights and requirements associated with public utility tariff filings. In addition to these statutory provisions, the filed tariff doctrine (or filed rate doctrine) makes the terms and conditions of a public utility's tariff binding on the customers of that utility. See, for example, Teleconnect Co. v. US West Communications, Inc., 508 N.W.2d 644 (Iowa 1993). While these provisions served the public interest when all aspects of a utility's retail tariff were subject to the jurisdiction of the Board, it is not

clear that the provisions serve the public interest in a less-regulated retail environment. At the same time, however, it appears the FCC contemplates that states will continue to review and approve intrastate access tariffs for at least some services for some time, which may be relevant to this discussion.<sup>4</sup>

Commenters are invited to address the role of tariffs in the future telecommunications marketplace.

#### **11. Monitoring and protection of the competitive marketplace**

Iowa Code §§ 476.100 and 476.101 contain a variety of provisions relating to local exchange competition, the obligations of ILECs and CLECs, and the Board's role in monitoring and promoting the development of competition among and between local exchange carriers. Some parts of these statutes appear to be out of date; others were superseded by federal law. Interested persons are requested to comment on the various provisions of these statutes.

#### **12. Other**

There are a number of other regulatory provisions about which the Board seeks public comment. First, is there a continuing need for the Board to issue certificates of public convenience and necessity pursuant to § 476.29, and if so, is there a better mechanism for meeting that need? Second, should the Board continue to review proposed reorganizations for some carriers, pursuant to § 476.77? Third, the Board invites comment about the regulatory requirements associated with discontinuance of service, set out in § 476.20 and the universal service provisions of

---

<sup>4</sup> CAF Order, para. 35.

§ 476.102, an authority which the Board has not yet found necessary to implement.

How can the Board preserve universal service in Iowa in the future?

Finally, at this time the Board does not play a major role in encouraging the deployment of broadband services in Iowa. However, based upon the information gathered by the Board in In Re: National Broadband Plan and State Broadband Deployment Plan, Docket No. NOI-2010-0002, it appears that broadband is and will continue to be a major factor in intrastate communications in the future. Should the Board undertake a role in promoting broadband deployment? If so, what should that role be?

### **III. CONCLUSION**

The Board intends this to be an open-ended inquiry into the future of telecom regulation in Iowa, so no tentative conclusions are offered at this time.

Initial written comments are to be filed on or before May 1, 2013. Reply comments may be filed on or before July 1, 2013. Further proceedings, possibly including a workshop, will be scheduled by the Board after the written comments have been reviewed and analyzed.

The Board anticipates this inquiry will result in a Board or staff report summarizing and analyzing the comments, and possibly including recommendations regarding the need for legislative changes, new rule makings or deregulation dockets, and other changes that may be identified and determined to be appropriate.

#### IV. ORDERING CLAUSES

##### IT IS THEREFORE ORDERED:

1. An inquiry, identified as Docket No. NOI-2013-0001, is opened to receive comment from the public regarding the appropriate scope of telecommunications regulation in Iowa.
2. Initial written comments may be filed on or before May 1, 2013.
3. Reply comments may be filed on or before July 1, 2013.

##### UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Darrell Hanson

ATTEST:

/s/ Joan Conrad  
Executive Secretary

/s/ Swati A. Dandekar

Dated at Des Moines, Iowa, this 11<sup>th</sup> day of January 2013.